LE COPY

Office Supreme Court, U.S.
FILED
JUL 29 1960
JAMES R. BROWNING, Clerk

No. 199

In the Supreme Court of the United States

OCTOBER TERM, 1960

LEAGUE OF WOMEN VOTERS OF THE UNITED STATES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General.
CHARLES K. RICE,
Assistant Attorney General.
HARRY BAUM,
KARL SCHNEIDLER,
Attorneys,
Department of Justice, Washington 25, D.C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	3
Conclusion	8

CITATIONS

Cases:

Cammarano v. *United States*, 358 U.S. 498 ... 4

Dulles v. *Johnson*, 273 F. 2d 362 ... 6–7

Noyes v. *Commissioner*, 31 B.T.A. 121 ... 7

Seasongood v. *Commissioner*, 227 F. 2d 907 ... 6

Slee v. *Commissioner*, 42 F. 2d 184 ... 4

Statute:

Internal Revenue Code of 1939, Sec. 812 (26 U.S.C. 1952 ed., Sec. 812) ... 2, 3

Miscellaneous:

Treasury Regulations §1.501(c)(3)–1 ... 5

559051—60

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 199

LEAGUE OF WOMEN VOTERS OF THE UNITED STATES,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (Pet. A1–A15) is reported at 180 F. Supp. 379.

JURISDICTION

The judgment of the Court of Claims was entered on January 20, 1960 (R. 175). A timely petition for rehearing (R. 177–180) was denied on April 6, 1960 (R. 183). The petition for a writ of certiorari was filed on June 30, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether the record warrants the finding of the court below that a "substantial part" of petitioner's activities consisted of "attempting to influence legislation", so that a bequest to petitioner did not qualify for estate tax deduction under Section 812(d) of the Internal Revenue Code of 1939.

STATUTE INVOLVED

Internal Revenue Code of 1939:

> SEC. 812. NET ESTATE.
>
> For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—
>
> * * * * *
>
> (d) *Transfers for Public, Charitable, and Religious Uses.*—The amount of all bequests, legacies, devises, or transfers * * * to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, * * *.
>
> (26 U.S.C. 1952 ed., Sec. 812.)

STATEMENT

The League of Women Voters of the United States, incorporated as a non-profit educational organization

under the laws of the District of Columbia, was named residuary legatee of a decedent's estate. Its articles of incorporation, by-laws, method of operation, and activities, are described in detail in the findings below, and are summarized in the court's opinion. (Pet. A2–A7.) The Court of Claims (two judges dissenting) found that a substantial part of the League's activities consisted of attempting to influence legislation, and accordingly held that the bequest to it did not qualify for Federal estate tax deduction under Section 812(d) of the Internal Revenue Code of 1939. (Pet. A8.)

ARGUMENT

The decision below is correct. There is no conflict or any other occasion for further review.

1. Section 812(d) of the Internal Revenue Code of 1939 authorizes a deduction for Federal estate tax purposes of bequests to a corporation "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes * * * no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation". Since the test of exclusively charitable or educational purposes by itself excludes organizations operated for private or selfish ends, the additional disqualification of organizations seeking to influence legislation cannot, if it is to have any meaning, be limited to those with selfish motivations. The policy is rather that the federal treasury should remain neutral in political controversies and that no attempt to influence legislation, whether worthy or unworthy,

should be subsidized through tax advantages. "Political agitation as such is outside the statute, however innocent the aim * * *. Controversies of that sort must be conducted without public subvention; the Treasury stands aside from them." Judge Learned Hand in *Slee* v. *Commissioner*, 42 F. 2d 184, 185 (C.A. 2), quoted with approval in *Cammarano* v. *United States*, 358 U.S. 498, 512.

Petitioner concedes (Pet. 9-10) that *a part* of its activities constituted "attempting to influence legislation". The sole issue presented, to which the court below properly addressed itself (Pet. A2), is whether the legislative activities represented a *substantial* part of petitioner's total activities. After reviewing the various legislative activities in which petitioner engaged (Pet. A2–A8), the court concluded that "instead of its being an unsubstantial and insignificant part of the League's activities, the influencing of legislation is the League's main purpose and reason for being" (Pet. A8). That finding has solid evidentiary support and is controlling here.[1] Whether or not they

[1] As appears from the findings of fact, summarized in the opinion below (Pet. A2–A8), the petitioner is a national organization having over 700 local and 35 state constituent Leagues, and approximately 128,000 members. It holds biennial national conventions attended by representatives of the local units, at which a "proposed program" for the next two years is adopted. The program consists of a "current agenda" and a "platform". According to the petitioner's official publication, the current agenda for 1949, for example, comprised "those governmental issues which the Convention has chosen for concerted action", including "supporting legislation"; to this end, League action was to "concentrate on" strengthening the United Nations, promoting international reconstruction and expansion of world

were also of educational value to its members (Pet. 8-9, 11), petitioner's manifold activities were aimed in substantial measure at the enactment or defeat of proposed legislation—activities which clearly amount to "attempting to influence legislation" as that phrase is used in the statute. See Treas. Regs. § 1.501(c)(3)-1.

Petitioner contends that only the time it devotes to direct political agitation—contacts with legislators, preparation of publications advocating specific legislations, etc.—should be considered in determining whether its legislative activities are "substantial." As the Court of Claims found, however, the time spent in formulating and agreeing upon the positions to be advocated is an essential part of petitioner's legislative activity. Petitioner provides its members not merely a forum for academic discussion of public issues but an organization through which they can make themselves felt as a potent political force. The democratic

---

trade, and analyzing Federal taxes and expenditures. The detailed explanation of the "current agenda" contained in the petitioner's official publication shows, as the court below observed (Pet. A5), that it was petitioner's intention, through its members and officials, to do what it could to promote legislation which would achieve these goals. In addition, "Requests for Action" were sent by the national organizations to the local Leagues, stating the petitioner's position on pending legislation and requesting the locals to write or send telegrams to legislators; finding 22(g) lists 22 separate instances of such communications, occurring during the two-year period of action planned at the 1948 Convention. These undisputed facts, together with the other evidence in the record and detailed in the findings, furnish ample support for the Court of Claims' conclusion that a "substantial part" of the petitioner's activities consisted of attempting to influence legislation.

process by which petitioner's program is arrived at means that a relatively larger amount of time is devoted to formulation than to advocacy of the program, but it also gives to its advocacy a respect and effectiveness it would not otherwise have. In short, petitioner's direct political agitation is but the end product of a major part of its activities ultimately directed to achieving desirable governmental policies through legislation, and viewed together those activities are undeniably "substantial."

2. Contrary to petitioner's assertion (Pet. 13–15), the decision below is not in conflict with *Seasongood* v. *Commissioner*, 227 F. 2d 907 (C.A. 6). The decision in that case was predicated on the factual determination that "less than 5% of the time and effort" of the taxpayer was devoted to the activities in question (p. 912)—a determination which impelled the court to conclude that "the so-called 'political activities' of the League were not in relation to all of its other activities *substantial*, within the meaning of the section". Here, on the other hand, the record shows, as the Court of Claims found, that a substantial (if not the major) part of petitioner's activities was devoted, directly or indirectly, to attempts to influence legislation.

Dulles v. *Johnson*, 273 F. 2d 362 (C.A. 2),[2] is also clearly distinguishable. That decision, holding bequests to three bar associations to be deductible, was based entirely upon factors peculiar to the associations involved and not present here. To begin with,

[2] The Government has filed a protective petition for certiorari in the *Dulles* case (No. 170), conditioned on the granting of the petition in this case.

the court held that most of the challenged activities of the bar associations—regulating unauthorized practice of the law, disciplining members of the bar for professional misconduct, and making recommendations with respect to judicial administration and candidates for judicial office—could not properly be classified as attempts to influence legislation, observing that "lawyers play a unique and important role in our society" and therefore "are peculiarly well equipped" to perform such functions (pp. 366–367). The remaining legislative activities were held not to be disqualifying for two reasons: (1) they were "designed to improve court procedure or to clarify some technical matter of substantive law" rather than "to promote some larger principle of governmental policy"; and (2) they constituted "but a small portion of the total activity of the Associations" (p. 367). Petitioner's legislative activities, on the other hand, are undeniably concerned with broad economic, social, or political policies and were expressly found to constitute a "substantial part" of its activities. Whatever its own merits, therefore—and we believe it to have been erroneously decided—the *Dulles* case provides no conflict requiring resolution by this Court.[3]

---

[3] There is no conflict with Tax Court and district court decisions relating to the taxability of contributions to the League which would justify the granting of certiorari in this case. The decisions cited by petitioner (Pet. 17–18) involved local leagues whose activities differed from those of the national League and did not entail substantial time spent to influence legislation. It should be noted, moreover, that in *Noyes* v. *Commissioner*, 31 B.T.A. 121, which involved the national League, the Tax Court dis-